

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Armstrong Utilities, Inc.)	
)	CSR-8254-L
and)	
)	
StogMedia, LLC)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2010

Released: April 16, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Armstrong Utilities, Inc. (Armstrong), operator of a cable system in the Butler/Zelienople, Pennsylvania area (the “system”), filed the above-captioned Petition for Declaratory Ruling.¹ Armstrong is seeking clarification of its technical obligations regarding a proposed leased-access arrangement with StogMedia, LLC (StogMedia).² StogMedia has not filed a reply. As set forth below, we decline to issue an advisory opinion in this narrow leased access dispute, and Armstrong’s petition is dismissed.

II. BACKGROUND

2. StogMedia is seeking to provide leased access programming on the Armstrong system.³ The parties appear to have largely reached resolution on the terms of the leased access contract, except that StogMedia proposes to deliver its programming via the internet. Armstrong does not currently receive any other programming via the internet, and insists that StogMedia use one of the programming delivery methods currently in use on the system. Section 76.971(c) of the Commission’s Rules requires that cable operators provide the “minimal level of technical support” necessary for leased access programmers to actually deliver their programming to subscribers,⁴ and the parties dispute the meaning of

¹ Armstrong Petition for Declaratory Ruling, CSR-8254-L (Petition).

² *Id.* at 1.

³ We note that this factual summary is based entirely on the Armstrong filing and the attached correspondence, the only information contained in the record.

⁴ 47 C.F.R. § 76.971(c).

this requirement. In correspondence supplied by Armstrong, StogMedia ultimately states that “[i]f Armstrong wants to deny us this [IP delivery] option...I suggest they officially do so and we can file a petition to get FCC [sic] to rule.”⁵ Rather than deny the leased access request, Armstrong filed the instant Petition for Declaratory Ruling.⁶

III. DISCUSSION

3. Section 1.2 of the Commission’s rules provides that “[t]he Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”⁷ Although couched as a request for a declaratory ruling to clarify the Commission’s interpretation of certain “terms and conditions” requirements, this is an extremely narrow issue that effects only the two named parties. The filing raises no issues of general applicability that need to be clarified. As such, it would be more accurate to describe this petition as one seeking an advisory opinion in a leased access controversy. We do not believe that a declaratory ruling request is appropriate in these circumstances. The issuance of a declaratory ruling is particularly inappropriate where there is existing precedent to guide the parties. In *StogMedia, d/b/a Stog TV v. Cable One*, the Media Bureau stated that Section 76.975(c) of the Commission’s rules:

... has been interpreted to mean that a cable operator must provide, free of charge, the same technical support that it provides free of charge to non-leased access programmers. Thus, the relevant test is whether a cable operator is providing like technical support for no fee to a non-leased access programmer. In this regard, Cable One attests that “StogMedia’s request for internet transport is unique and requires Cable One to provide . . . technical services that have not been, and are not, currently [being] provided to others.”⁸

The preceding precedent does not indicate that Armstrong is prohibited from accepting Internet delivery of StogMedia’s leased access content. Armstrong is free to accept delivery of leased access content by any format acceptable to Armstrong. This precedent does require that, if Armstrong does not accept Internet delivery of programming content from non-leased access programmers, Section 76.975(c) does not require Armstrong to accept Internet delivery of StogMedia’s content. As discussed above, the narrow, fact-specific issue presented by Armstrong’s Petition does not present a broadly applicable issue that is capable of repetition that the declaratory ruling procedure was intended to resolve. Armstrong must decide whether or not to accept StogMedia’s proposed method of delivery. If Armstrong does decide to formally deny carriage of StogMedia programming, and StogMedia files a complaint, this will give both parties a full opportunity to brief this issue. For the above reasons, we will dismiss the instant petition.

⁵ Petition at Exh. 12.

⁶ Petition at Exh. 13.

⁷ 47 C.F.R. § 1.2.

⁸ 24 FCC Rcd 2947, 2949 (MB 2009) (footnotes omitted and internal quotations original).

IV. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that the Petition for Declaratory Ruling filed by Armstrong Utilities, Inc., **IS DISMISSED** pursuant to Section 532 of the Communications Act of 1934, as amended, 47 U.S.C. § 612, and Sections 1.2 and 76.975 of the Commission's rules, 47 C.F.R. §§ 1.2 and 76.975.

5. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

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⁹47 C.F.R. § 0.283.